cretion made the winding-up order. The debtor company appealed to the Court of Appeal where it was held (Upjohn L.J. dissenting) that the county court judge had exercised his discretion on the correct principles and, accordingly, there was no ground for interfering with the order made. Here again in the instant case and the county court case, as indeed also in the *Wools Case*, the issues are different. The matter of the exercise of the discretion in the county court case again arose on the issue of whether the debtor company and its supporting creditors had raised an issue on which the petitioner should be denied his *prima facie* right to the winding-up order. Upjohn L.J. in his dissenting judgment has this to say,

"Where a creditor has proved his right against the company to a winding-up order *ex debito justitiae*, but other creditors of the company have expressed conflicting views as to the desirability of winding it up, the judge has conferred on him a discretion by section 346 of the Companies Act, 1948 (Our section 289 of the Act), which leaving out immaterial words, provides: 'The court may have regard to the wishes of the creditors as proved to it by any sufficient evidence.' The discretion is permissive and not mandatory, and is in terms complete and unfettered. However, it is a discretion which must be exercised judicially, and the court is not entitled arbitrarily to disregard the wishes of the creditors as proved to it." (Page 237).

In the instant case the question of a majority of creditors opposing the petition was not put in issue by creditors of the company. The law which the learned Chief Justice had to administer in the instant case is set out in sections 218 and 221 of the Act.

In these circumstances we are of the view that we should not interfere with the learned Chief Justice's exercise of his discretion. We accordingly dismiss the appeal, the costs of the respondent to come out of the assets of the company.

Appeal dismissed.

Solicitors: *B. Mohan Singh & Co.; Lee & Lee.*

CHNG HEN TIU & ANOR. v. SIME DARBY HOLDINGS LTD.

[O.C.J. (D'Cotta J.) March 16, 1978]
[Singapore — Case Stated No. 2 of 1977]

Arbitration — Case stated — Contract for sale of building complex — Payment in form of shares — Condition that shares should be listed in stock exchanges — Failure to comply with condition — Breach of contract — Rescission — Whether contract affirmed — Estoppel — Restitutio in integrum.

The claimants and the respondents had made an agreement for the sale of shares in a company which owned a building complex in Singapore. Under the comprehensive bargain (a) the claimants agreed to sell their shares in the complex to the respondents for $50 million to be paid partly in cash and partly by 4 million fully paid Sime Darby shares; (b) the respondents agreed to arrange at the request of the claimants a placement of $8 per share of the 4 million Sime Darby shares should the market price fall below $8 per share; (c) the respondents undertook to arrange a loan of up to $32 million to the claimants by a consortium of banks. It was a term of the sale agreement that the respondents should obtain the approval for listing of the shares in all stock exchanges which list Sime Darby shares. The respondents did not in fact obtain approval for the listing of the shares on the Stock Exchange of Malaysia. The claimants learned on April 3, 1976 that the respondents had not obtained listing approval in Kuala Lumpur and on May 10, 1976 they wrote to the respondents rescinding the contract. The claimants claimed a return of their shares in the complex. The dispute between the parties was referred to arbitration by an arbitrator who referred a Special Case stated to the court. The case stated was whether on the facts found and the true construction of the contractual bargain between the parties the claimants were entitled to the relief claimed by them. The learned arbitrator came to the conclusion on the facts that the respondents were obliged to obtain the approval of the Kuala Lumpur stock exchange for the listing of the 4 million Sime Darby Shares within a reasonable time and that the respondents had failed to do so. He also found that the claimants should have exercised but failed to exercise their rights to rescind the arrangements within a reasonable time. He found that the claimants by their subsequent conduct had chosen to affirm the share sale agreement and were therefore bound by it. The learned arbitrator further held that the claimants were estopped from rescinding the agreement and that by May 10, 1976 *restitutio in integrum* was no longer possible.

Held: (1) the respondents were obliged to obtain the approval of the Kuala Lumpur Stock Exchange for the listing of the 4 million Sime Darby shares and a term should be implied in the agreement that they should do so within a reasonable time;

(2) on the other hand there was no obligation on the part of the claimant to exercise their right to rescind the agreement within a reasonable time;

(3) in this case the claimants rescinded the contract five weeks after they discovered that listing approval had not been obtained. This was in the circumstances a reasonable time;

(4) in the totality of the circumstances the acts of the claimants in making payments under the contract during the time when they were considering their position after finding that the listing approval had not been obtained did not constitute affirmation of the contract;

(5) the respondents were not estopped from rescinding the agreement;

(6) *restitutio in integrum* was possible;

(7) the claimants were entitled to the reliefs they claimed.

Cases referred to:-

(1) *Schuler A.G.* v. *Wickman Machine Tool Sales Ltd.* [1974] A.C. 235.

(2) *Trollope* v. *N.W. Metropolitan Hospital Board* [1973] 1 W.L.R. 601.

(3) *McComick & Anor.* v. *National Motor and Accident Insurance Union Ltd.* 49 Ll.L.R. 361, 365.

(4) *Farnworth Finance Facilities* v. *Attryde & Anor.* [1970] 2 All E.R. 774.

(5) *Re Salkeld* 12 Ad. & E. 767.

(6) *Woodhouse A.C. Israel Cocoa Ltd.* v. *Nigerian Produce Marketing Co. Ltd.* [1972] A.C. 741.

CASE STATED.

Lai Kew Chai (*Eddy Teng Jong Pu* with him) for the claimants.

Raymond Kidwell Q.C. (*J. Grimberg* with him) for the respondents.

D'Cotta J.: This matter comes before the court in two aspects, first as an award in the form of a Special Case Stated by the Arbitrator, Mr. Robert MacCrindle, Q.C., and secondly by way of motion to remit the award to the Arbitrator. The question for my decision in the Case Stated is —

"Whether on the facts found and the true construction of the contractual bargain between the parties the claimants are entitled to the relief claimed by them or to any of it."

Subject to the decision of this court, the learned Arbitrator has awarded and adjudged that the claimants' claims failed and stood dismissed. If this court should answer the question in the affirmative, the learned Arbitrator has made the alternative award in favour of the claimants and has also granted to the claimants such further or other relief as to this court may seem proper.

The claims of the claimants are as follows:—

"(1) A declaration that the first and second claimants are entitled to the return and re-transfer of the Golden Bay shares by the respondents;

(2) A declaration that the beneficial ownership in the Golden Bay shares has passed to the first and second claimants and that the respondents and/or their nominees are holding the said shares to or for the use of the first and second claimants;

(3) An order that the respondents do all such acts and execute all such documents as may be necessary to re-transfer the said shares to the first and second claimants on refund by them to the respondents of all the sums of money referred to in paragraphs 3 and 4 of Annexure Document A (pp. 3-4) or, alternatively, on refund by the first and second claimants of all such sums of money as may be ascertained upon the taking of proper accounts to have been paid by the respondents to or for the accounts of the claimants under the said agreement; and

(4) Costs."

The claimants, Chng Heng Tiu and Chng Heng Khong, are the shareholders and owners of Golden Bay Pte Ltd. (hereinafter called "Golden Bay") a private company incorporated in Singapore. Mr. Chng Heng Tiu was the major shareholder of Golden Bay. Golden Bay had a contract with Lian Hup Construction Co. Pte Ltd. another company substantially controlled by the claimants who were the contractors to build a complex on land in Orchard Road owned by Golden Bay comprising office/bank/shopping centre/flat/theatre.

The respondents (hereinafter referred to as "Sime Darby") are and were at all material times a public company incorporated in the United Kingdom having substantial business interests in Malaysia and Singapore.

In early 1973, the claimants were interested in selling and Sime Darby were interested in buying the whole complex. Sime Darby were to acquire the freehold of the land immediately and were to take over the benefit of the contract with Lian Hup but the claimants were to pay for the completion of the complex.

In pursuance of this contract of sale and purchase, the parties entered into a comprehensive bargain which comprised the following:—

(a) A Share Sale Agreement whereby the claimants agreed to sell all their said shares in Golden Bay to Sime Darby. The sale was on the basis that the claimants would be responsible to complete the building of the complex in accordance with the approved building plans. The consideration was $50 million. It was to be paid partly in cash and partly by 4 million fully paid Sime Darby shares. The payment of the cash portion and the issue of the 4 million Sime Darby shares were to be by instalments as set out in clause 2(i) of the Share Sale Agreement;

(b) A "Placement Agreement" whereby Sime Darby undertook to arrange at the request of the claimant a placement of $8/- per share of the 4 million Sime Darby shares should the market price thereof fall below $8/- per share in July, August and September 1975;

(c) Sime Darby undertook to arrange a loan of up to $32 million to the claimants by a consortium of banks. Sime Darby agreed to give a guarantee to the lenders in consideration for which the claimants agreed to mortgage the 4 million Sime Darby shares to Sime Darby.

Owing to the need to issue the 4 million Sime Darby shares in one lot so that the mortgage back to the respondents could take place, the 4 million shares were not issued by instalments as provided in the Share Sale Agreement. The schedule in the Table of Payments was also not followed in relation to Sime Darby's payment of the cash portion by instalments. In lieu of the progress payments, the claimants were allowed by Sime Darby to, and they did, maintain a debit account with Golden Bay. The claimants could request Golden Bay to pay the expenditure under the building contract. Sime Darby guaranteed that indebtedness to Golden Bay.

At the date of the Share Sale Agreement, the Stock Exchanges which listed the existing shares of Sime Darby were the Stock Exchange in London, Stock Exchange in Hong Kong, the Stock Exchange of Malaysia and Singapore. The Stock Exchange of Malaysia and Singapore was a joint Stock Exchange having a trading floor in Kuala Lumpur and Singapore.

On May 24, 1973, the Stock Exchange of Malaysia and Singapore was deleted from the Register of Societies in Singapore, and Singapore and Malaysia each had a separate Stock Exchange, namely the Stock Exchange of Singapore Ltd. incorporated on May 24, 1973, and the Kuala Lumpur Stock Exchange Berhad, incorporated on July 2, 1973. All shares previously issued by Sime Darby, other than the 4 million Sime Darby shares issued to the claimants which were formerly listed on the Stock Exchange of Malaysia and Singapore, were automatically listed on both the Stock Exchange of Singapore Ltd. and the Kuala Lumpur Stock Exchange Berhad.

Sime Darby applied for and obtained listing of the 4 million Sime Darby shares on the Stock Exchange of Hong Kong on May 16, 1973, on the Stock Exchange of London on December 9, 1973 and on the Stock Exchange of Singapore Ltd. on June 14, 1974.

On November 7, 1973, Sime Darby applied to the Kuala Lumpur Stock Exchange Berhad and to the Stock Exchange of Singapore Ltd. for the listing of its unlisted shares. The Kuala Lumpur Stock Exchange Berhad by letter of November 20, 1973 demanded as a pre-requisite to the listing by it of approximately 11 million of such shares (including the said 4 million shares) that Sime Darby should supply a copy of a letter of approval by the Capital Issues Committee of Kuala Lumpur to the issue of such shares, or at least to the listing thereof. As found by the learned Arbitrator, Sime Darby could have applied for and obtained their approval. But at all material times prior to the commencement of these proceedings they chose not to do so. On March 22, 1975, Sime Darby formally withdrew their application to the Kuala Lumpur Stock Exchange Berhad in respect of the listing of the 4 million Sime Darby shares.

In December 1973, the 4 million Sime Darby shares were allotted to Chng Heng Tiu one of the two claimants. These shares were registered in the

name of Sime Darby's nominees. Chng Heng Tiu received dividends as and when they were declared on the shares and on occasion he had exercised the right to vote.

I shall now refer to events which happened in connection with the Placement Agreement. The price of each Sime Darby share fell below $8/- in July, August and September 1975. On or about August 21, 1975, the claimants informed Sime Darby that they wished to be paid in cash totalling $32 million in lieu of the 4 million Sime Darby shares in question upon the completion of the Share Sale Agreement. Sime Darby failed to place any of the 4 million shares as they had undertaken. Instead on or about November 10, 1975, Sime Darby by their Solicitors' letter (Document 330 in Bundle C) indicated that they did not admit any entitlement on the claimants' part to call for the payment in cash of $32 million in lieu of the 4 million Sime Darby shares. Even as late as January 28, 1976 (Document 352 in Bundle C) Sime Darby kept open the issue as to whether they were under any obligation to place the shares at $8/- each or to make up to the claimants the difference between the price at which the shares were to be disposed of and the sum of $8/- per shares.

As regards the agreement under which Sime Darby agreed to procure a loan of $32 million to the claimants this was carried into effect in July 1973. As agreed the claimants mortgaged the 4 million shares to Sime Darby as the security to support the claimants indemnity to Sime Darby. This, of course, was merely by way of mortgage and did not deprive the claimants of their right to redeem the shares the moment they had paid off the lenders.

In clause 15 of the Award, the learned Arbitrator referred to the fact that Sime Darby had repaid to the consortium of banks substantial sums in respect of the advances. As these repayments were made by Sime Darby to the banks after the commencement of the arbitration between the parties which led to the case stated, they would appear to be irrelevant to the issues before the learned Arbitrator.

In October 1975, the parties to these proceedings agreed that October 15, 1975 shall be taken as the date for the purposes of the building contract.

Clauses 23 and 24 of the Award read as follows:—

"23. At no time before April 3, 1976 —

(a) did the claimants have reason to know or suspect that (as was the fact) approval for listing of the said 4 million shares had not been obtained from the Kuala Lumpur Stock Exchange Berhad and that the shares could not, unlike the great majority of the other shares in Sime Darby, be traded on the trading floor at Kuala Lumpur;

(b) did the claimants enquire or ascertain (as it would have been possible for them without difficulty to do) whether such approval had been obtained;

(c) did the claimants have any desire to trade the said shares on that floor or elsewhere.

24. On or about April 3, 1976 the claimants learned or obtained reasonable grounds for believing and believed that approval for listing of the said 4 million shares had not been obtained as aforesaid. Thereafter they made no enquiry or request of Sime Darby as to such listing. Mr. Chng thereafter continued to request Golden Bay to make certain payments for the debit of his debit account with Golden Bay and to authorise Sime Darby to recoup the amount of those payments under clause 2(iv) of the Share Sale Agreement. The manuscript request by Mr. Chng at page 25 of Bundle X was intended by him to convey via its addressee (a Sime Darby employee) to Sime Darby, and was by it understood as conveying, authority from him to arrange for payment of S$20,000 to a third party and to offset that amount in the accounting between them under that clause. In consequence, Sime Darby caused or permitted Golden Bay on or about April 22, 1976 to effect payment of that S$20,000 on that basis. At all times after April, 1973 up to May 10, 1976, the parties conducted themselves towards each other in a manner such as to indicate to each other that they regarded the Share Sale Agreement as a binding subsisting agreement."

On May 10, 1976, the claimants in a letter to Sime Darby claimed to rescind the Share Sale Agreement and they called for the re-transfer to them of the Golden Bay shares.

Clause 17 of the Share Sale Agreement reads as follows:—

"This Agreement is conditional upon approval being obtained for the listing of the said shares from all Stock Exchanges which list SDH shares and in the event that such approval is not obtained any monies paid thereunder by SDH shall be refunded by the Shareholders and any of the said shares in the Company transferred to SDH shall be re-transferred to the Shareholders and no party shall have any further claims or demands against the other."

It is common ground that the first mention of the words "the said shares" refers to the 4 million Sime Darby shares. The second mention of the same words refers to the Golden Bay shares. The words "the SHAREHOLDERS" refer to the claimants and "SDH" means the respondents (Sime Darby).

The first question for determination by the court is:—

"Are Sime Darby obliged to obtain the approval of the Kuala Lumpur Stock Exchange Berhad for the listing of the 4 million Sime Darby shares?"

Clause 17 is very clear to me. Its wording and place as the last clause in the Share Sale Agreement leaves me in no doubt whatever that it fairly and squarely imposes on Sime Darby an obligation in law to obtain listing approval. The intention of the parties was to confer on the 4 million Sime Darby shares all the attributes of the great majority of other shares in Sime Darby to the extent that the 4 million Sime Darby shares would be freely marketable on all the four trading floors in London, Hong Kong, Singapore and Kuala Lumpur. This must have been the intention as the bulk of the consideration was agreed to be in the form of the 4 million Sime Darby shares. Learned counsel for Sime Darby submitted that a true and proper construction of clause 17 would lead to the conclusion that Sime Darby were obliged only to obtain approval for listing in London and Hong Kong only or alternatively in London, Hong Kong and Singapore or Kuala Lumpur.

This submission is founded on the facts, *inter alia*, that at the time of the Share Sale Agreement, there were only three Stock Exchanges, that the Stock Exchange of Malaysia and Singapore had been dissolved and that at any rate, the Stock Exchange of Malaysia and Singapore was regulated from Singapore. Like the learned Arbitrator I am unable to accept this submission which is one of the reasons given by learned counsel for Sime Darby in his submission that on the proper construction of the contract, the claimants' claim must fail.

The construction as canvassed by Sime Darby would be too artificial and not in line with the approach of the House of Lords in *Schuler A.G.* v. *Wickman Machine Tool Sales Ltd.*[1] As will appear later in this judgment, this interpretation of clause 17 will not lead to any grotesque or absurd result.

Like the learned Arbitrator, I have also come to the conclusion that a term ought to be implied into clause 17 as to the time within which Sime Darby were obliged to obtain the approval of the Kuala Lumpur Stock Exchange Berhad for the listing of the 4 million Sime Darby shares. It is understood that the approval had to be obtained within a reasonable time. This must be the answer of the parties to the officious by-stander. This must also have been the intention of the parties if they had averted to this question. This is a term to be implied because it is necessary to give "business efficacy" to the Share Sale Agreement — see *Trollope* v. *N.W. Metropolitan Hospital Board.*[2]

The learned Arbitrator has held that the claimants were under an obligation in law to operate clause 17 within a reasonable time after the expiry of the reasonable time within which Sime Darby were obliged to obtain the approval for the listing. I do not think that such a term can be implied into clause 17 and the implication of such a term would not accord with the principles enunciated in *Trollope's* case. Furthermore, the learned Arbitrator's finding in clause 23(a) of the Award would refute this. It is also pertinent to note that there was no obligation in law on the part of the claimants to ascertain whether or not Sime Darby had obtained listing approval for the 4 million Sime Darby shares on the Kuala Lumpur Stock Exchange Berhad. Once again I cannot accept the submission of learned counsel for Sime Darby when he said that the claimants should have invoked clause 17 within a reasonable time and they did not do so.

I will now deal with clause 24 of the Award. The learned Arbitrator found that on or about April 3, 1976, the claimants learned or obtained reasonable grounds for believing or believed that approval for the listing of the said 4 million shares had not been obtained as aforesaid. Thereafter they made no inquiry or request of Sime Darby as to such listing. The learned Arbitrator then proceeded as follows:—

"Mr. Chng thereafter continued to request Golden Bay to make certain payments for the debit of his debit account with Golden Bay mentioned in paragraph 8 above, and to authorise Sime Darby to recoup the amount of those payments under clause 2(iv) of the Share Sale Agreement."

As will be observed, the learned Arbitrator found that April 3, 1976 was the first date when the claimants came to know that Sime Darby had not applied for approval of the listing of the said shares. The claimants gave notice to Sime Darby to rescind the agreement on May 10, 1976. This period of 5 weeks may be referred to as the "critical period". The learned Arbitrator found in Annexure Document X to the Award that Golden Bay during this period made four payments. A perusal of Document X will show that only the last of these payments was made on the specific instructions given by the claimants on April 22, 1976. The other three payments although made during the critical period were made in pursuance of what may be termed the continuing instructions given long before the critical period by the claimants requesting Golden Bay to make the payments for the debit of their account with Golden Bay and authorising Sime Darby to recoup the amount of those payments under clause 2(iv) of the Share Sale Agreement. Apparently the authority given by the claimants to meet these payments was not counter-manded or revoked. The payments however were long over due. This is the subtle difference which the learned Arbitrator failed to distinguish and which was obviously the basis of the claimants' application for remission. It was apparently this finding which prompted the learned Arbitrator to arrive at the conclusion which he did in the last sentence of clause 24 of the Award as well as his finding in clause 26(e) "that the claimants by their conduct as therein described prior to May 10, 1976, had chosen to affirm the Share Sale Agreement as an unconditional subsisting contract".

On this question of affirmation I would like to refer to the case of *McComick & Anor.* v. *National Motor & Accident Insurance Union Ltd.*,[3] and to the judgment of Lord Justice Scrutton at page 365 in which he said:—

"I think also this is clear, on a series of authorities: that whether you treat it as an election or whether you treat it as a ratification or whether you treat it as a decision simply to act on the knowledge you have acquired, the duty to take action does not arise (1) unless you know all the facts — being put on inquiry is not sufficient; you must know the facts — and (2) unless you have a reasonable time to make up your mind. You are not bound the moment the statement is made to you to make up your mind at once; you are entitled to a reasonable time to consider — to a reasonable time to make inquiries."

Lord Justice Slesser in the same case had this to say at page 371 —

"In those circumstances, I think this case is a very long way from a waiver which can be simply based on the view that they continued to fight the case for the few hours that remained after this man had stated very ambiguously and uncertainly that he had been convicted. In my opinion, a person is entitled to a reasonable time for consideration as to whether he will take one course or another; and when he does elect, he must do it in an unequivocal way and in such a manner as to represent to other persons definitely and unequivocally that he has taken that view whereby it may act to their detriment."

Again in *Farnworth Finance Facilities Ltd.* v. *Attryde & Anor.*,[4] Lord Denning in his judgment at page 778 said: —

"Affirmation is a matter of election. A man only affirms a contract when he knows of the defects and by his conduct elects to go on with the contract despite them."

It follows from this quite obviously that only when a party to a contract has become aware of his rights or his strict rights at law can he elect to reject or affirm. How can a party exercise this right if he is unaware of them. The claimants only became aware of their rights on April 3, 1976 after which they took steps which culminated in their terminating the contract on May 10, 1976.

I will now return to the four payments made by the claimants during the critical period which I have said earlier had probably prompted the learned Arbitrator to arrive at the conclusion that the claimants had affirmed the contract. Let us examine the conduct of the claimants during this critical period. They learned on April 3, 1976 that Sime Darby had not

obtained listing approval in Kuala Lumpur. According to the claimant (Mr. Chng) in his affidavit in support of the application by way of motion for a case stated he was in London consulting leading counsel from April 7 to April 17. On his return to Singapore, he was in communication with the Stock Exchange of Kuala Lumpur from whom he learned that Sime Darby had not obtained listing approval. It is quite apparent from this that the claimants were considering what their legal position was before they made their election and finally they wrote to Sime Darby on May 10, 1976 rescinding the contract i.e. five weeks after discovery that listing approval had not been obtained. This 5 weeks in my opinion is a very reasonable time; the law permits them a reasonable time within which they have to elect i.e. either to affirm or reject. In my view, in the totality of the circumstances their acts in making the four payments did not constitute affirmation of the contract because their conduct during this period refutes this.

I would like to refer to the third submission made by learned counsel for Sime Darby that on the proper construction of the contract, the claimants' claim must fail and this is — "Because on the true construction of the contract, alternatively by reason of a term implied to avoid absurdity, the claimants right to invoke clause 17 ceased on his opting to take cash and losing all possible interest in the shares in September 1975".

This does not mean that the Claimants gave their shares *carte blanche* to Sime Darby for them to do what they liked with the shares; Document 346 in Bundle C states categorically and I quote: — "to credit the proceeds to my account with the Chartered Bank in permanent reduction of the outstanding amounts together with accrued interest advanced to me by a consortium of banks."

It is only for this reason that the claimants authorised Sime Darby to sell their shares because they were assured that the proceeds of sale would obtain a return of at least $32 million if not more. The circumstances would have been completely different had the shares appreciated in value. As things turned out they did not. But this does not absolve Sime Darby from their obligation under the placement agreement. Once again I cannot accept the submission of learned counsel for Sime Darby.

In clause 26(f) of the Award, the learned Arbitrator came to the conclusion that the claimants were precluded by estoppel from asserting the Share Sale Agreement was not unconditional. All the acts of Sime Darby prior to April 3, 1976 was in each case done pursuant to some obligation or entitlement under the three agreements reached on March 29, 1973 between the parties. As for the claimants' authorisation after April 3, 1976, I am not satisfied that such an act amounted to "a clear and unambiguous" promise on the part of the claimants that they were not insisting on the provisions of clause 17. To quote the language of Mr. Justice Littledale in *Re Salkeld*[5] for waiver to be operative so that a party's claim is estopped, it must be "unequivocal, definite, clear, cogent and complete".

The nature of the conduct giving rise to estoppel was dealt with by the House of Lords in *Woodhouse A.C. Israel Cocoa Ltd.* v. *Nigerian Produce Marketing Co. Ltd.*[6] This case arose out of the devaluation of the sterling pound. The buyers anticipating devaluation of the sterling, requested variation of the terms concerning payment in a letter. The sellers granted a variation in different terms. It was accepted in that case that the buyers' interpretation of the sellers' letter was as reasonable as the different interpretation of the sellers. Nevertheless it was held that there was not in the sellers' letter a sufficiently unambiguous representation to found an estoppel.

The learned Arbitrator came to the conclusion that prior to May, 10, 1976, it had ceased to be possible to give *restitutio in integrum* to the parties of the Share Sale Agreement. Here again, I am of the view that the learned Arbitrator had erred in law. At Common Law the strict rule is that restitution must be as to the whole. However, Equity allows the taking of accounts and as long as the parties could be restored to the position substantially as before, the party seeking rescission would not be denied the right — Chitty on Contract 24th Edition, paras. 399-400.

Clause 17 itself contains the terms under which the Share Sale Agreement could be unscrambled. The procedure as set out and as agreed by the parties in that clause ought to be followed.

In all the circumstances I therefore answer the question before this court in the affirmative. As the learned Arbitrator has made his award in respect of prayers 1 and 2 of the claimants' amended points of claim, I now make an order in terms of prayers 3 and 4 of the claimants' claim in the points of claim. As conditions for the rescission of the Share Sale Agreement, the claimants are to refund to Sime Darby all *bona fide* expenditure for the improvements of Orchard Towers and to return the 4 million Sime Darby shares.

Claim allowed.

Solicitors: *Lee & Lee; Drew & Napier.*

HOWE YOON CHONG v. CHIEF ASSESSOR, PROPERTY TAX, SINGAPORE

[O.C.J. (Rajah J.) March 27, 1978]
[Singapore — Originating Motion No. 30 of 1975]

Property Tax — Rating — Valuation — When Chief Assessor can act to amend valuation list — Transfer without consideration — Procedure before Valuation Review Board — Appellant entitled to cross-examine Chief Assessor on valuation — Appellant entitled to inspection of valuation lists — Relevance of assessment of comparable premises — Property Tax (Fees) Regulations, 1975 Property Tax Act (Cap. 144), ss. 4, 18 & 63.

This was an appeal from an order of the Valuation Review Board. The property in question was sold to one Howe Min Cheng and another who purchased it as tenants in common in equal shares for $20,000. Subsequently there was a transfer by Howe Min Cheng of the one undivided equal half share standing in his name to the appellant. The Commissioner of Stamps was satisfied that no consideration had passed and the deed was duly stamped at $10. A notice of the transfer was given to the Chief Assessor who thereupon served a notice to amend the Valuation List by increasing the annual value of the property from $1,340 to $26,000. The appellant objected to the amendment and gave notice of the objection to the Chief Assessor. The Chief Assessor turned down the objection and the appellant appealed to the Valuation Review